

General Terms and Conditions Internet Payment Gateway ("IPG General Terms")

of amys-it Solutions GmbH, Dornhofstr. 12 63263 Neu-Isenburg, Germany



1 IPG General Terms and IPG Agreement

1.1 These IPG General Terms set out the rights and obligations of the contracting partner (hereinafter referred to as the "Partner") and Amys-IT GmbH & Co. KG (hereinafter referred to as "Amys-IT") regarding the Partner's use of the Internet Payment Gateway and its optional extensions (hereinafter collectively referred to as "IPG"). They form the basis for the contractual relationship between Amys-IT and the Partner about the IPG (hereinafter referred to as the "IPG Agreement"). No contractual relationship is established between Amys-IT and the Partner's customer (hereinafter referred to as "End Customer").

1.2 The following contract documents about the IPG form integral parts of the IPG Agreement in the order listed below:

- IPG General Terms
- Terms and conditions governing the commissioned processing of personal data,
- Amys-IT General Terms and Conditions,
- Amys-IT order confirmation,
- Amys-IT order form completed and signed by the Partner,
- If applicable, a contract proposal from Amys-IT accepted by the Partner,
- Product documentation,
- Price lists.

Documents the Partner has not already received can be obtained from Amys-IT.

2 Services to be provided by Amys-IT

2.1 Amys-IT shall provide the services agreed in the other IPG contract documents, in particular the product documentation (see clause 1.2 above), for the Partner.

2.2 The data shall be transmitted to and from Amys-IT via Internet, using third-party telecommunications networks and services. Connections are also set up using third-party transmission systems existing on the Internet.

2.3 The services to be provided by Amys-IT shall not include, without limitation,

- the connection and data transmission between the Partner and the End Customer, which is beyond Amys-IT's sphere of influence,
- data transmission on third-party telecommunications networks which are, just like the data traffic on the Internet, beyond Amys-IT's sphere of influence and for whose availability and reliability Amys-IT does not accept responsibility,
- the correctness of the result of the authorisation request or blocking inquiry for the payment instrument used. Even if the transaction is authorised, Amys-IT accepts no liability for the Partner's claim being settled by the End Customer or the authorising bank.

2.4 Amys-IT may shut down access to the IPG or suspend any functionalities of it if and as long as necessary works are undertaken on its systems which cannot be performed without shutting down access to the IPG or suspending certain functionalities of it. Unless this is unreasonable for Amys-IT, Amys-IT shall shut down access to or suspend functionalities of the IPG not during normal day-time peak business hours and shall notify the Partner in advance.

3 Software

3.1 The Partner may use software as part of the IPG. Unless otherwise agreed in writing, the properties of the software shall be laid down in conclusive form in the product

documentation and the IPG General Terms. Descriptions of properties do not constitute guarantees within the legal sense.

3.2 The Partner shall be granted the simple, non-exclusive, non-transferrable right limited to the term of the IPG Agreement and to the territory of the Federal Republic of Germany to use the software for its internal purposes within the scope necessary under the IPG Agreement. If the right of use is to be expanded so as to include more countries, this shall be subject to express written agreement.

3.3 The Partner may reproduce the software only if and to the extent necessary for using it in accordance with the IPG Agreement, including, without limitation, for installing it on the server, loading it into the working memory and running the program(s).

3.4 The Partner may make one (1) backup copy of the software. If a backup of the entire data including the software is required for reasons of data security, the Partner may also make the strictly necessary number of backup copies. Data carriers with backup or archival copies shall be duly marked.

3.5 Unless otherwise stipulated in the IPG Agreement, the Partner shall not be entitled to translate, adapt, decompile, reverse engineer, alter or otherwise modify the software beyond the scope permitted by statute.

The Partner may undertake a rectification of errors pursuant to Sec. 69d Para. 1 of the German Copyright Act [*Urhebergesetz – UrhG*] only if Amys-IT has not undertaken the same within a reasonable period and against reasonable remuneration.

Before decompiling the software pursuant to Sec. 69e *UrhG*, the Partner shall give Amys-IT the opportunity, in writing and setting a reasonable deadline, to disclose the interface information to the Partner against reasonable remuneration.

The Partner shall inform Amys-IT in writing upon request to what extent it has used interface information and prove its use with reasonable effort.

The Partner may have all of the acts mentioned in clause 3.5 above performed by third parties only if Amys-IT was not prepared to perform them against reasonable remuneration.

3.6 The Partner shall not be entitled to surrender the software to third parties for use without Amys-IT's prior written consent.

3.7 Upon receipt of software updates and/or upgrades, the Partner shall destroy or delete any previous versions and any reproductions of the same as applicable and install the updates and/or upgrades. The obligation to install and delete software as aforesaid shall not apply if it is a proven fact that the Partner cannot be reasonably expected to install the updates and/or upgrades (e.g. if updates and/or upgrades are not sufficiently safe in operation or defective).

3.8 Any copyright, trademark and other notices of proprietary rights that may be present on or in the software must not be removed. The Partner shall apply such notices also to backup and/or archival copies it created.

3.9 Amys-IT may have compliance by the Partner with the provisions of this clause 3 verified once per calendar year by an audit to be undertaken by Amys-IT itself or an independent auditor during normal business hours upon reasonable advance notice in writing. If this reveals that the Partner culpably breached the provisions of clause 3, the costs of the audit shall be borne by the Partner. Amys-IT reserves the right to assert further losses.

3.10 Upon termination of contract, the Partner shall permanently delete the software and any archival or backup copies or other reproductions of it which may exist. Fulfilment of these obligations shall be confirmed by the Partner to Amys-IT in writing upon request.

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4 Availability of the IPG

4.1 Within the scope of technical and operational possibilities, the IPG services provided by Amys-IT shall be available at least 98% on average over the year. The point of access to Amys-IT's network is agreed to be the point of transfer, i.e. the availability stated refers only to processes within the Amys-IT network. The availability of services, networks and other components outside the Amys-IT network shall not be included in availability measurements.

4.2 The following times shall not be included in availability calculations: Shutdowns pursuant to clause 2.4 above, downtimes agreed with the Partner and downtimes which are attributable to the Partner or third parties other than vicarious agents of Amys-IT or which are outside Amys-IT's sphere of influence.

5 Provision of IPG services by third parties

Amys-IT may instruct companies affiliated with it and, if necessary, further third parties to provide services forming part of the IPG. Such third parties shall also be entitled to retain subcontractors. Amys-IT shall name the subcontractors to be used to the Partner upon request.

6 Partner's responsibilities

6.1 The Partner shall be under an obligation to disclose to Amys-IT all information about it that is relevant to the performance of the contract.

6.2 For use of the IPG, the Partner shall keep web-enabled software and hardware, an Internet connection and an interface enabling the Partner to use the IPG readily available and operable at all times in accordance with the specifications in the product documentation (see clause 1.2 above). In addition, the Partner shall comply with all other duties to cooperate which may be specified in the IPG contract documents (see clause 1.2 above).

6.3 Moreover, the Partner shall

- enter into a contract with the parties responsible for the payment instrument used (e.g. credit institution, credit card acquiring company) to the extent necessary to process payments,
- take all necessary precautions (including, without limitation, password protection, firewalls, anti-virus software) to ensure the safety of its systems,
- report any problems to Amys-IT without undue delay – in the event of reports made by telephone followed by fax or emailed confirmation –, specifying the exact circumstances in which the problem occurred and potential causes, make all information and documents required for diagnosing and remedying the problem, including a detailed description of the circumstances in which the problem occurred and potential causes available to Amys-IT and assist Amys-IT within reasonable limits in diagnosing and remedying the problem,
- notify Amys-IT without undue delay if intellectual property or proprietary rights are asserted by third parties with respect to the IPG and assist Amys-IT in defending against such claims and settling any disputes arising from this. The Partner shall enter into agreements with third parties for judicial or extrajudicial settlement of such disputes only with the prior written consent of Amys-IT.

7 Remuneration

7.1 The remuneration for the IPG services shall be based on the price lists of Amys-IT currently in force upon conclusion and extension of the IPG Agreement, unless the remuneration is

specifically agreed upon with the Partner. The Partner's payment obligation shall begin to apply when Amys-IT makes the IPG available for operation. The IPG shall be deemed available for operation if and when at least one payment system can be processed.

7.2 The terms of payment and the implementation of price changes are set out in Amys-IT's General Terms and Conditions.

8 Warranty rights

8.1 Amys-IT warrants that the IPG shall be available for use within the scope of availability agreed by contract.

8.2 If the services provided by Amys-IT have any material defect, Amys-IT shall initially have the right and the obligation to render subsequent performance. The Partner can terminate the IPG Agreement or demand that the remuneration be reduced only if at least two attempts by Amys-IT at subsequent performance within a reasonable period have proved unsuccessful.

8.3 Any claims for damages shall be governed by clause 9 below.

9 Liability

9.1 Amys-IT shall be liable – on whatever ground – only in cases of intent, gross negligence, culpable breach of an obligation the very discharge of which is a prerequisite for the proper performance of the IPG Agreement and on the discharge of which the Partner can and does rely (hereinafter referred to as "Material Contractual Obligation"), if a guarantee has been given and in cases of malice or culpable injury to life, limb or health. Strict liability and other liability for negligence shall be excluded.

9.2 In the event of negligent breach of Material Contractual Obligations, Amys-IT shall be liable only for typical and foreseeable damage.

9.3 In the cases specified in clause 9.2 above, Amys-IT's overall liability shall be limited to EUR 50,000.00 per damaging event and EUR 100,000.00 per calendar year. Amys-IT shall not be liable for any indirect or consequential damage (e.g. loss of profit or sales).

9.4 The above mentioned limits of liability shall also apply for damage caused by legal representatives, executive employees or vicarious agents of Amys-IT.

9.5 The above mentioned limits of liability shall not apply in cases where liability applies under mandatory statutory provisions, e.g. on the basis of the German Product Liability Act [*Produkthaftungsgesetz – ProdHaftG*].

9.6 The Partner shall be under an obligation to take reasonable measures to avert and/or mitigate any damage, including, without limitation, to secure data and protect against computer viruses.

10 Confidentiality

10.1 The Parties shall treat any information from the sphere of the respective other Party and/or companies affiliated with it that is marked as or is manifestly confidential, including, without limitation, company or trade secrets, as strictly confidential, use such information strictly for the purposes of cooperating under the IPG Agreement and not to disclose such information to third parties unless otherwise stipulated in the IPG Agreement or subject to the prior written agreement of the respective other party. This confidentiality obligation shall also apply with respect to the content and integral parts of the IPG Agreement. Companies affiliated with Amys-IT and employees of the Parties shall not be deemed to be third parties.

10.2 Employees, subcontractors and other vicarious agents shall also be required to comply with the confidentiality obligation.

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- 10.3** This confidentiality obligation shall survive any termination of the IPG Agreement for a period of two years.
- 10.4** The confidentiality obligation shall not include information that (a) is or becomes publicly known without breach of the confidentiality obligation, (b) was lawfully acquired by the receiving Party from third parties without any breach of confidentiality by such third parties in relation to the disclosing Party, (c) was developed independently of the disclosing Party, (d) is required to be disclosed pursuant to a judicial or administrative proceeding or for other compelling legal reasons or (e) was in the possession of the receiving Party already before receipt from the disclosing Party.
- 11 Data protection**
- 11.1** The Partner shall be responsible for ensuring compliance with all applicable data protection laws and regulations if it collects, processes (e.g. by transmitting them to Amys-IT) or uses personal data of data subjects, e.g. End Customers or its employees, in using the IPG. This applies, for instance, for obtaining any consent of data subjects which may be required.
- 11.2** To the extent that Amys-IT collects, processes or uses personal data, e.g. of End Customers or employees of the Partner, in using the IPG, the terms and conditions governing the commissioned processing of personal data shall apply.
- 12 Partner's General Terms and Conditions**
General Terms and Conditions or any other terms and conditions of the Partner shall not apply. This shall also apply if Amys-IT does not expressly object to them where the Partner refers to them being included.
- 13 Amendments to the IPG General Terms and the IPG services**
- 13.1** These IPG General Terms are subject to amendment by Amys-IT. Amys-IT shall notify the Partner in writing of any amendments to the IPG General Terms. Unless the Partner objects to the amendments in writing to Amys-IT within four weeks of receipt of such notification, the amended IPG General Terms shall apply from the effective date of the amendments as specified in the notification. In the notification, Amys-IT shall expressly point out this consequence of refraining from any statement to the Partner.
In the event of an objection, Amys-IT shall be entitled to terminate the IPG Agreement to expire on the intended effective date of the amendment or up to three weeks thereafter by extraordinary termination with immediate effect.
- 13.2** Amys-IT shall be entitled to make the following amendments to the IPG services:
- 13.2.1** Technical improvements and innovations and any other changes, provided that these are reasonably acceptable for the Partner and the services are not materially changed.
- 13.2.2** Changes made to comply with requirements of public authorities or courts and/or legal requirements.
- 14 Term and termination**
- 14.1** The IPG Agreement shall come into effect upon confirmation of the order by Amys-IT or upon acceptance by the Partner of a contract proposal from Amys-IT, however, no later than when the Partner begins to use the IPG. The same shall apply *mutatis mutandis* for any subsequent orders placed by the Partner.
- 14.2** Unless otherwise agreed, the minimum term of this Agreement shall be 12 months.
- 14.3** The IPG Agreement shall renew for a further 12 months beyond the minimum term in each case unless terminated by ordinary termination on three months' notice to expire at the end of the (minimum) term.
- 14.4** The IPG Agreement can be terminated by extraordinary termination as follows:
- 14.4.1** By Amys-IT on three months' notice to expire at the end of a calendar month if Amys-IT wishes to discontinue the operation of the IPG.
- 14.4.2** By either Party on three months' notice to expire at the end of a calendar month if, due to the rescission and/or termination of any part(s) of the IPG Agreement, the terminating Party, from an objective standpoint, no longer has an interest in continuing the IPG Agreement.
- 14.4.3** The statutory right of the Parties to extraordinary termination for good cause shall not be affected thereby. Amys-IT shall be deemed to have good cause for termination in particular if (a) the Partner, despite a reasonable deadline having been set by Amys-IT, materially fails to comply with a material duty to cooperate or breaches any provisions of data protection laws, (b) the Partner keeps available or offers illegal content as part of its Internet offering, (c) due to statutory provisions or requirements imposed by public authorities or courts, it is no longer possible for Amys-IT to provide the IPG or adjustments are necessary which would involve unreasonable efforts for Amys-IT or (d) the Partner is insolvent or execution measures against the Partner have remained unsuccessful.
- 14.4.4** The Partner and Amys-IT shall also be entitled to terminate the IPG Agreement by extraordinary termination without notice if the requirements of the banking industry and/or of credit card organisations change or other requirements and/or the legislation of public law impose a mandatory change of the payment system during the term of the Agreement and it is therefore impossible to maintain the IPG or Amys-IT does not offer to do so.
- 14.4.5** If the IPG Agreement is terminated by extraordinary termination pursuant to clause 14.4.3 above before the expiry of its term, Amys-IT shall be entitled to claim damages for non-performance in an amount equal to 80% of the agreed monthly flat fee, multiplied by the number of the months remaining until the end of the term, taking into account a 4% discount previously deducted, unless the Partner is not responsible for the termination. Any further-reaching claims for damages shall remain unaffected.
- 14.5** Notice of termination must be given in writing. If notice of termination was transmitted by fax, the original shall be submitted without undue delay.
- 15 Reference list**
Amys-IT shall be entitled to name the Partner in a reference list it keeps.
- 16 Final provisions**
- 16.1** Any changes and amendments to these IPG General Terms require written form. This also applies to any waiver of the requirement for written form.
- 16.2** This IPG Agreement shall be governed by the laws of the Federal Republic of Germany to the exclusion of the international law of conflicts and the UN Sales Convention (*CISG*). To the extent permitted by law, the registered office of Amys-IT shall be the place of jurisdiction.
- 16.3** The registered office of Amys-IT shall be the place of performance for Amys-IT and the Partner.